In the High Court of Judicature at Madras

Dated:02.08.2007

Coram

The Honourable Mr.Justice P.JYOTHIMANI

Writ Petition No.14205 of 1998

R. Muthukrishnan .. Petitioner

..vs..

1.Indian Overseas Bank
rep. By its Chairman
and Managing Director
Central Office
763 Mount Road
Chennai 600 002.

2.The Executive Director
Indian Overseas Bank
Central Office
763 Mount Road
Chennai 600 002.

3.The General Manager
Appellate Authority
Indian Overseas Bank
Central Office
763 Mount Road
Chennai 600 002.

4.Mr.A. Gnanappa
Deputy General Manager
Indian Overseas Bank
Chokkikulam
Madurai 625 002.

5.S. Rajaraman
Chief Officer
Indian Overseas Bank
Ramakrishnapuram
New Delhi.

6.S. Lawrence
Inspector
Inspection Department
Indian Overseas Central
Office, 763, Mount Road
Madras 600 002. ..Respondents

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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Manadamus calling for the records of the records, of the Executive Director the 2nd Respondent herein bearing No. DO; ED; (RUS); RA 1001 dated 10/7/96 and of the Apellate Authority the General Manager, Central Office, I.O.B. The 3rd Respondent herein relating to his order bearing No. DO; GM;ALC; AA:15:97 dated 10.11.1997 which confirmed the order of the Disciplinary Authority viz., The Deputy General Manager, Vigilence Department Central Office, I.O.B. Bearing No. D.O. DGM (NR): 13411: DA dated 31/3/1997 and quash the said orders dated 10.07.1998 and 10.11.1997 and consequently direct the first respondent to forthwith reinstate the petitioner with continuity of service, backwages and all attendant benefits including promotion etc.

For Petitioner : Mr. B. Ravi for M/s. R.Subramanian

For Respondents 1 to 5 : Mr. K. Srinivasamoorthy for M/s. N.G.R. Prasad

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ORDER

This writ petition is filed challenging the order of the Deputy General Manager, Indian Overseas Bank, Vigilance Department, being the disciplinary authority dated 31.03.1997, as confirmed by the Appellate Authority, viz., General Manager, the third respondent by order dated 10.11.1997 and by the subsequent order of the second respondent, the Executive Director dated 10.07.1998.

2. The short facts leading to the filing of this case are that the petitioner has joined in the services of the respondent Bank in March, 1983 on the basis of selection by the Banking Service Regulation Board, Southern Region, Madras. He was initially appointed as a Probationary Agricultural Officer at Pachamalaikottai near Nilakottai, Madurai District. He has completed his probation as Agricultural Officer in March, 1984 and thereafter, the said post was re-designated as Assistant Manager (Agriculture). From March, 1984 to November, 1987, the petitioner served in the said capacity in Ayakudi Branch and thereafter, transferred to Tiruppullani Branch, Ramnad District in November, 1987.

2(a). Since the petitioner was posted in the rural Branches, he was involved in the implementation of Integrated Rural Development Programme (in short, IRDP) etc. promoted through the Branches of Nationalised Banks located in rural areas. As per the said Scheme, the Bank identifies people engaged in various occupations like fishing, sheep rearing, agriculture, etc. who are eligible to get loans. The loans are granted against hypothecation of fishing nets in the case of fishermen, crops in the case of agriculturists and cattle and sheep in the case of people engaged in rearing cattle or sheep and the hypothecated goods or units are insured.

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2(b). The repayment of loans are deferred for a considerable period and the beneficiaries of the said loans are the illiterate and un-educated people. According to the petitioner, Agricultural Officer like him identifies persons for the advancement of loan after conducting a pre-sanction inspection, which involves verification whether the person has sufficient experience in the line of activity for which the loan is being advanced and whether he/she is a bona fide resident of the area. It is on the recommendation of the Agricultural Officer to the concerned Branch, the loans are sanctioned.

2(c). It is the case of the petitioner that in respect of loans for the purchase of sheep and milch animals, the loans are disbursed through the Purchase Committee of which the Agricultural Officer is a constituent member and the amounts are directly disbursed to the sellers. It is the further case of the petitioner that for the purpose of identifying the persons eligible, he always relied on the advice of the Block Development Officer, the Commissioner of the Panchayat Union and the Gramsevak, who are all Government officials.

2(d). The petitioner worked in Thiruppullani Branch between October, 1987 and November, 1990 and during that period he was also deputed as Agri-officer to six other Branches, viz., Ramnad, Uchipuli, Thangachimadam, Alagankulam, Pudumadam and Kilakkarai, and therefore, he was having heavy work load. He was in charge of implementing the IRDP Scheme and other agricultural lending Schemes in the aforesaid Branches and on certain occasions he had to do the clerical duties and to act as Branch Manager also due to the exigency of the situation.

2(e). It is his case that during the period of three years at Thiruppullani, he has spent 1/3rd of his tenure by acting as a Branch Manager of that Branch. In December, 1990, he was transferred to Keeranur Branch of Pudukkottai District and thereafter, in 1991, he was transferred to Avudayarkoil Branch. While he was working in Avudayarkoil Branch, he was placed under suspension by the Deputy General Manager by his order dated 24.09.1991. Thereafter, he was issued with charge memo by the same officer on 30.09.1991. In the said charge memo, four charges were framed against the petitioner, all are relating to the loans advanced for fishing nets and sheep loans between 1989 and 1990, when he was working in Uchipuli Branch. The petitioner has submitted a detailed explanation to the said charges on 23.12.1991. A preliminary enquiry was held in respect of the said charges on 04.06.1992. The enquiry in respect of the said charges was conducted between 04.12.1992 and 07.09.1994 and the findings of the Enquiry Officer along with the letter of the Disciplinary Authority were served on the petitioner on 07.04.1995.

2(f). In the meantime, a second charge memo was issued to the petitioner on 20.05.1992, framing 12 charges and they relate to the period in which he worked at Thiruppullai Branch. The petitioner has submitted his explanation, in respect of which there was a preliminary enquiry held on 01.09.1993 and according to the petitioner, in respect of the said second charge, the

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enquiry was adjourned to 12.12.1994.

2(g). Likewise, a third charge memo dated 26.03.1993 was issued to the petitioner containing 9 imputations relating to dairy loans, fishing net, crop loans during 1988-1989, when the petitioner was working in Thangachimadam Branch. Preliminary enquiry was conducted in respect of the said charges on 30.04.1996 and subsequently the enquiry was adjourned to 09.05.1996 and 09.08.1996 and the petitioner could not participate in the enquiry due to his ill-health.

2(h). The fourth charge sheet was issued to the petitioner on 11.10.1993, based on an investigation report submitted by one Lawrence, relating to fabrication of purchase vouchers, loan for accommodation purposes and misappropriation of loan proceeds when the petitioner was working in Keelakkari Branch and they also relate to sheep loans, fishing net loans, etc.

2(i). It is the case of the petitioner that he has submitted defence arguments, in brief, in respect of the said charge sheet on 02.12.1996. According to the petitioner, the enquiry in respect of the said charge was started on 08.07.1994 and adjourned to an unspecified date and thereafter, again adjourned to 13.09.1996. In respect of the same, enquiry report was submitted on 26.12.1996. It was, thereafter, the Disciplinary Authority, by order dated 31.03.1997, has passed the final order of punishment of dismissal from service in respect of all the charges. Aggrieved by the said order, the petitioner has filed an appeal before the General Manager on 12.06.1997, which was also dismissed on 10.11.1997. His further representation to the second respondent dated 15.12.1997 was also dismissed on 10.07.1998 and he has filed the writ petition challenging the said orders.

2(j). According to the petitioner, while he has participated in the enquiry in respect of first charge dated 30.09.1991, he was unable to participate in the enquiry in respect of other charges and they were held ex parte. According to the petitioner, the procedure followed by the Enquiry Officer is defective and even in respect of the first charge, wherein he has participated in the enquiry, the Enquiry Officer has not dealt with the defence in a proper manner and therefore, the enquiry report is not fair. The consecutive four charges framed against the petitioner have resulted in the inability of the petitioner in participating in enquiry in respect of other charges in a full fledged manner due to ill-health and therefore, the enquiries were held ex parte and according to the petitioner, the enquiry is illegal. According to the petitioner, when the charges include the loans that have been sanctioned to non-existing persons, the Bank has not let in any evidence complaining of short payment and the charges have not been demonstrated properly. He would also assail the impugned orders on the ground that the allegation of misappropriation has not been given with proper details and even the quantum of misappropriation has not been mentioned. It is also the case of the petitioner that even if the Agricultural Officer has recommended the loan, the Branch Manager is vested with power of verification and therefore, the ultimate power to

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granting loan lies with the Branch Manager.

2(k). It is also his case that excessive work which has been imposed on the petitioner is not taken into consideration both by the Enquiry Officer as well as the Disciplinary Authority while awarding punishment. Further, the domestic enquiry was not done in a proper manner. According to him, the charges are misconceived and no independent witnesses were examined by the Bank to prove the charges. In respect of Charges 3 and 4, in spite of the request by the petitioner that he was ill, the Enquiry Officer has conducted enquiry ex parte. The order of the appellate authority is vitiated by non-application of mind. That apart, it is the case of the petitioner that inflicting of maximum punishment of dismissal is passed without application of mind.

3. The respondent Bank has filed a counter affidavit. It is the case of the respondent Bank that as an Agricultural Officer attached to a Branch, the petitioner plays a vital role in various stages of granting loan. It is he, who verifies the genuineness of the borrowers, their addresses and their line of activity and his duty includes documentation, conducting pre-post sanction, etc. It is also made clear in the counter that in the absence of recommendation from the Agricultural Officer, the Branch Manager does not grant any loan. The respondent Bank would submit that in the enquiry held against the petitioner it was proved that the petitioner did not conduct proper pre-post sanction inspection in respect of recommending persons for loans, which resulted in loss to the Bank.

3(a). It is also denied that the workload of the petitioner was heavy. Even if some more works are entrusted, it does not exonerate the duty of the petitioner being an Agricultural Officer to act as per the instructions and scheme. It is also stated that the charges framed against the petitioner include that he granted five fishery loans of Rs.5,000/- each for purchase of fishing nets to various borrowers and it was found on investigation that such borrowers are not in existence. In respect of granting of certain other loans it was revealed that the petitioner has disbursed to the borrowers only a part amount of the loan and the balance amount was misappropriated. In respect of the payment of cost of the fish nets, which he is expected to pay only to the sellers, who are genuine dealers, it was found on investigation that he has disbursed amounts to various persons, who are not at all dealers in fishing nets, and in that way also he has misappropriated and mis-utilised the funds. It is also stated that the petitioner has granted 56 sheep loans, which were all mis-utilised and the purchase vouchers relating to the said loans were fabricated. It was due to the reason that the charges were very serious, charge sheets were issued against the petitioner directing him to appear for enquiry and in that, the Enquiry Officer held that the charges were established, which were accepted by the Disciplinary Authority which resulted in dismissal order. It is also denied that there is any enmity between the petitioner and Shri Rajaram, who has investigating the matter. It is also stated that it was Shri Gnanappa, who investigated the irregularities in respect of Uchipuli Branch wherein serious misconduct was found, and

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therefore the allegations of mala fide against respondents 4 and 5 are unfounded.

3(b). Shri Gnanappa, 4th respondent herein, who is an Officer in Zonal Office, Madurai, deputed to investigate the loan transactions recommended by the petitioner and the investigation report was marked as Ex.MW.123 during the enquiry, which has brought out the very serious nature of the misconduct committed by the petitioner. It is the case of the respondent Bank that enquiry in respect of first charge dated 30.09.1991 was held on 04.12.1992, 01.09.1993, 03.09.1993, 01.02.1994, 02.02.1994, 03.02.1994, 03.07.1994 to 30.07.1994, 03.09.1994 and 07.09.1994. The petitioner was given full opportunity in the enquiry. On behalf of the Bank two witnesses were examined and 49 documents were exhibited. The petitioner has examined one defence witness and marked 50 defence documents. The non-production of the borrowers as witnesses will not exonerate the petitioner from the liability when charges are proved through witnesses and documents. The findings given by the Enquiry Officer are cogent and clear on oral and documentary evidence with reasons. The respondent Bank also submitted that simply because the police or CBI has not taken any action against the petitioner, it does not mean that the department can not proceed with disciplinary proceedings. The departmental enquiry is in respect of misconduct and not in respect of criminal activity.

3(c). In respect of the second charge memo dated 20.05.1992, the petitioner attended only one preliminary hearing and thereafter, in spite of notices received by him for subsequent hearings, he failed to attend the same and therefore, the enquiry had to be conducted ex parte. The opportunity given to the petitioner has not been availed of by him. The petitioner has not produced any proof to the Enquiry Authority that he was sick. In fact the petitioner has written to the Enquiry Officer that he will not participate in the enquiry. In respect of the second charge, enquiry was held on 12.12.1994, 07.02.1995, 14.03.1995 to 16.03.1995, 12.04.1995, 22.6.1995 and 24.06.1995 and the petitioner has wilfully avoided attending enquiry on those days. However, the petitioner has submitted his defence in brief and the same was considered by the Enquiry Officer and the Disciplinary Authority while arriving at the conclusion. The charges framed against the petitioner under the second charge sheet dated 20.05.1992 were found to be established.

3(d). In respect of the third charge memo dated 26.03.1993, which relates to Thankachimadam Branch, the petitioner has recommended various dairy loans to non-existing persons, with the result, the loan proceeds were misappropriated by the petitioner. It was also found that the animals were not purchased and the purchase vouchers are found to have been fabricated by the petitioner. He has also recommended loans for milch animals and the petitioner has misappropriated the amount also. The petitioner has also accepted quotations for fishing nets from the persons who were not dealers of the same. It was also found that some of the persons for whom fishing net loans were granted at Thangachimadam Branch were found to have availed of fishing net

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loans from Tiruppullani Branch also, in which the petitioner was officer-in-charge of Agricultural advances. Therefore, it was a clear case of unlawful recommendations by the petitioner for undue pecuniary advantage. The preliminary enquiry was held on 30.04.1996 and since the petitioner did not participate, one more opportunity was given by adjourning the same to 09.08.1996. Even on that day, he failed to appear and the next hearing was held on 12.09.1996 and 20.09.1996 and the petitioner has not chosen to attend the enquiry on the said dates, and therefore, the enquiry had to be conducted ex parte and the Enquiry Officer has conducted the hearing in a fair manner and found that all the charges framed against the petitioner were established.

3(e). In respect of 4th charge dated 11.10.1993, which relates to Keelakkarai Branch, the respondent Bank states that it was in respect of granting of sheep loans and it was found that purchase vouchers were fabricated. That also was relating to recommendation of loan to non-existing persons in respect of fishnet loans. Again in respect of sheep loans, animals were not purchased and the loan proceeds were mis-utilised. The investigation conducted by the 6th respondent Shri Lawrence brought out the serious irregularities of the petitioner. Having committed such irregularities, the petitioner attributed mala fide on the said Lawrence. The petitioner has failed to appear before the Enquiry Officer and the Enquiry Officer found clinching oral and documentary evidence and ultimately the Disciplinary Authority has applied his mind and passed the order, which is perfectly in order. The Appellate Authority also considered the order of the Disciplinary Authority and rejected the appeal in its proper perspective. Therefore, according to the respondent Bank, sufficient opportunity has been given to the full possible extent and the enquiry cannot be said to be perverse or against the principles of natural justice.

4. Mr. B. Ravi, learned counsel appearing for the petitioner would vehemently contend that the entire enquiry proceedings are vitiated due to non-application of mind by the Enquiry Officer. He would also contend that the petitioner was not the sanctioning authority and he was only a recommending authority and ultimately, the Branch Manager, who sanctioned the loan had the responsibility of verifying the correctness of the recommendation. He would further contend that the Enquiry Officer has not analysed the evidence in a logical manner and the relevant objections have not been carefully considered by the Enquiry Officer. He would also submit that more than 70% of the accounts referred to the charge sheet are not connected with the petitioner. He further submitted that there has been an undue delay in conducting enquiry. On the other hand, the petitioner requested time on the ground of ill-health and it was not considered and the the enquiry was proceeded ex parte. The entire charges were in violation of the guidelines issued under IRDP Scheme. It is also his contention that the Disciplinary Authority has not considered the relevant materials. He also submitted that the Enquiry Officer and the Disciplinary Authority have failed to follow the mandatory provisions of Service Rules. In effect, his contention is that the Disciplinary Authority has not given proper opportunity and also not acted as per the regulations governing

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the service conditions of Bank employees. He would also submit that the Enquiry Officer is acting as a quasi-judicial authority and therefore, he should act in a proper manner and he cannot shift the burden of proof and reject the relevant testimony based on surmises and conjectures. In support of it, he would rely upon the judgement of the Supreme Court reported in 2000 (6) SCC (L&S) 840 (Narinder Mohan Arya v. United India Insurance Co.Ltd.). He would also submit that the appellate authority has reproduced the verbatim findings given by the Disciplinary Authority and therefore, according to him, it is liable to be set aside. He would also rely upon the judgement of the Supreme Court reported in 2006 (3) CTC 669 (Director (Mkt.), Indian Oil Corp. Ltd. v. Santosh Kumar). He would argue that inasmuch as four different charges have been framed at different points of time, it is the duty on the part of the Enquiry Officer as well as the Disciplinary Authority to go into the minute details of each and every one of the charges and also the imputations and come to a conclusion that each and everyone of the charges framed against the petitioner has been proved. In the absence of minute details, the disciplinary proceedings are to be held as violative of the principles of natural justice.

5. On the other hand, Mr.K.Srinivasamoorthy, learned counsel appearing for the respondent Bank would submit that the loans as per the said Scheme are granted based on the recommendations of the Agricultural Officers. He would also submit that the petitioner being an Agricultural Officer is one of the members of the Committee, who identify the persons eligible for loans under the Scheme. The learned counsel has also brought out the various discrepancies made by the petitioner in recommending the persons for loan and he has also brought out some of the instances wherein the petitioner has recommended very same persons in respect of various Branches under his control and therefore, on the face of it the conduct of the petitioner cannot be taken lightly. He would submit that the Enquiry Officer has followed the procedure as per the regulations and proper opportunity was given and if the petitioner failed to avail the opportunity, he cannot question the enquiry on the basis of principles of natural justice. He would also submit that in the domestic enquiry what is required is sufficiency of evidence on the prima facie basis and the preponderance of evidence is sufficient to come to a conclusion that the delinquent is involved.

5(a). To substantiate his contention, he would rely upon the judgement in State of Haryana v. Kattan Singh (1982 I LLJ 46) and State of U.P. & Ors. v. Nand Kishore Shukla & Anr.(1996 (2) LLJ 672). He would also submit that in these sort of cases where the customers have the contact with the Bank, the customers need not be involved in enquiry, and he would rely upon Executive Committee, SBH, Hyderabad vs. D. Dhaneswara Rao (1996(2) LLJ 272). He would also submit that when the Disciplinary Authority agrees with the Enquiry Officer, it is not necessary for the Disciplinary Authority to go into and discuss each and every minute points while passing the final orders. In that regard he would rely upon the judgement rendered in 1996 (1) LLJ 288 (S.B.B.& J & Ors. v.

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S.P.D.G. v. P.D.G. v. S.B.B. & J. & Ors.) He would also submit that the contention of the petitioner that the Enquiry Officer as well as the Disciplinary Authority has not gone into the minute details of each and everyone of the charges cannot be raised in this writ proceedings under Article 226 of the Constitution, since High Court cannot re-appreciate the evidence. He would also submit that when the appellate authority concurs with the findings of the Disciplinary Authority, there is no necessity for re-appreciation of evidence and to substantiate the same, he relied upon the judgement rendered in 1994 I LLN 427 (I.O.B. v. R.Sathyamoorthy).

5(b). He would also submit that the disciplinary proceedings and departmental enquiry cannot be compared with the criminal cases and the nature of proof required in disciplinary proceedings is different from that of criminal cases, for which he relied upon the judgement of the Apex Court in G.M. Tank vs. State of Gujarat (2006 (5) SCC 446). He would ultimately submit that the entire appraisal of the documents would show that the Disciplinary Authority has acted in a most bona fide manner, and on the other hand, the petitioner has committed grave misappropriation of the funds of the Bank cannot complain of the procedures which have been followed in accordance with law by both the Enquiry Officer, Disciplinary Authority and Appellate Authority. According to him, the findings of the Disciplinary Authority are not perverse and the same were arrived at only after consideration of the entire facts. He would submit that there is no merit in the contention of the petitioner that when the Manager is the authority to sanction loan as the recommending authority he cannot be awarded with serious punishment. On the other hand, it is his contention that the Branch Manager acts and sanctions loans only based on the recommendations of the Agricultural Officer like that of the petitioner and therefore, the role of Agricultural Officer in the IRDP Scheme is more onerous.

6. I have heard the learned counsel for the petitioner as well as the respondent Bank and perused the entire records.

7. The fact that the petitioner was appointed as an Agricultural Officer under the respondent Bank and he was working in the said capacity in the above said four Branches during the relevant point of time is not in dispute. It was under the Integrated Rural Development Programme (IRDP) introduced by the Government of India during 1978-79 with the objective of providing full employment and better standard of living through productive programme, the respondent Bank appointed Agricultural Officers, which was subsequently re-designated as Assistant Manager (Agriculture) under the said Scheme, viz., IRDP and also connected programmes and the selected small farmers, marginal farmers, agricultural labourers, non-agricultural labourers, rural artisans, families living below the poverty line were made eligible for advancement of loan by the Bank as per the identification by a Task Force Committee appointed in various levels consisting of Panchayat Union Chairman, Block Development Officer, President of the Village, Bank's representative, who were expected to be actively involved in various stages of

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implementation of IRDP such as identification of beneficiaries and preparation of viable schemes for their benefit. Under the scheme, various concessions have been given in respect of repayment, subsidy, etc. The loans are given for agricultural and other activities or farm sector like land based activities and the horticulture, minor irrigation, development, etc. apart from dairy, poultry, duckery, fishery, sheep and goat rearing, piggery, sericulture or any other viable schemes suitable for the area. The other activities included industry, service and business sectors apart from non-farm activities as may be decided by the Bank. It is also under the Scheme that in cases of advancement of loan for purchase of various assets, including animals etc. the same must be from the suppliers approved by the State Government and the acquisition of assets shall be verified by the Bank officials within a specified time.

8. The service condition of the petitioner being the Officer of the respondent Bank is governed by the Officer Employees' Discipline & Appeal and Conduct Regulations, 1976. As per the Regulations, Regulation No.5 contemplates the authority to institute disciplinary proceedings and impose penalties. Likewise, Regulation No.6 prescribes the procedure for imposing major penalties. Regulation No.17 provides for appeal, apart from Regulation No.18, which provides for review.

9. Against the petitioner, four charges were framed on 30.09.1991; 20.05.1991; 26.03.1993 and 11.10.1993, which are relating to the functioning of the petitioner in the four Branches, viz., Uchipuli Branch, Thiruppullani Branch, Thankachimadam Branch and Keelakkari Branch respectively. The following are the charges:

"First Charge:

Statement of Imputations:

It is charged that you had committed the following irregularities at our Uchipulli Branch.

I) You had granted fisheries loan of Rs.5,000/- each for purchase of fishing nets to persons listed in Annexure-A hereto. Verification revealed that no such persons existed and hence you had thereby derived pecuniary advantage to yourself or persons known to you.

II) You had granted fishing loan of Rs.5,000/- each for purchase of fishing nets to persons listed in Annexure-B hereto and the borrowers have stated that they have received only part of the loan proceeds in cash and the balance amount have been misappropriated by you.

III) You had granted fisheries loans of Rs.5,000/- each as per Annexure-C hereto to persons for purchase of fishing nets. The loan proceeds were disbursed in favour of Mr.

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P. Murugesan, Cherkuvadi Pamban and Mr. S. Murugan Pilakari. Verification revealed that there was no such firms in existence and the Pay Orders were encashed and loan proceeds misutilised/misappropriated.

IV) You had granted 56 sheep loans as listed in Annexure-D hereto. The loan proceeds were disbursed in cash leading to total misutilisation of the loan. The purchase vouchers were found to be fabricated. Insurance Company also have found that assets were not created. The loans have become sticky and difficult of recovery.

It is thus charged that you had failed to ensure and protect the interest of the bank and discharge you duties with utmost integrity, honesty, devotion, and diligence. You had also acted otherwise than in your best judgement in discharging your official duties. You had also acted in a manner which is unbecoming of an officer of the bank."

"Second charge:

Statement of Imputations:

It is charged that you had committed the following irregularities at Tirupullani branch while functioning as Asst. Manager (Agri.)

You had granted 15 sheep loans under IRDP during 1989/1990. The following irregularities were noticed while granting the advance.

1)(a) You had drawn the loan proceeds in cash. The animals were not purchased and the loan proceeds were misappropriated.

(b) You have granted the following two loans Loan No.2/89 and Loan No.4/89. Verification revealed that the above borrowers have executed the documents by receiving commission of Rs.100/- each and the loan proceeds were utilised by one Mr. Muniyandi, President of Thinnaikulam Panchayat Union with whom you colluded to derive pecuniary advantage for both.

(c) You had granted sheep loan of Rs.6500/- each to Smt. Rajeswari and Smt. Arumugam (loan 6/89 and 7/89) wife and sister-in-law of one Mr. Karuppaiah, President of Kalimangundu Panchayat. Investigation revealed that you had paid cash of Rs.6000/- only to Smt. Arumugam and the balance amounts were misappropriated by you and persons known to you.

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(d) You had fabricated all the purchase vouchers and arranged one Mr. T. Shanmugavelu

S/o.Tholan purported to be the seller for sheep loan 4/90 and obtained stamped receipt (purchase voucher) for a consideration of Rs.20/-. It is reported that there was no actual sale of animal.

2) You had accommodated one Mr. M. Shanmugam and one Mr. U. Mani by way of granting two fishnet loans, one at Uchipulli and another at Tirupullani, the details are as under. The advance was accommodated by you knowing fully well that the earlier loan was outstanding, to derive pecuniary advantage.

	At Uchipulli		at Tirupullani	
M.Shanmugam	3/89	5,000/-	90/88	5,000/-
U. Mani	1/89	5,000/-	95/88	5,000/-

3) You had granted loans wherein the borrowers were not available at the addresses given in the application forms. Local residents were also not able to identify the borrowers. The particulars of such loans are in Annexure A. It is charged that you had misappropriated the loan proceeds to yourself.

4) You had granted second loan to six borrowers as listed in Annexure B to enable them to close their earlier loans thus violating the laid down norms of the Bank. It shows that the loans were granted for accommodation purpose only.

5) You had granted the following fishnet loans of Rs.5,000/- each in benami names. The advances were granted for accommodation purpose only and to derive pecuniary benefit.

Loan No.	*Date*	*Borrower's Name and per document*	*Real Beneficiary of loan*
167/88	3.11.88	Ramasamy S/o.Karuppusamy	Velu, S/o Tholan
92/88	08.07.88	Marimuthu S/o. Shanmugam	-do-
10/89	12.01.89	M. Mahalingam	Arumugam
176/88	03.11.88	K. Chelliah	-do-
9/89	12.1.89	K. Karuppiah S/o. Andi	Muthu s/o. Kampiah
171/88	3.11.88	Pandi S/o Gurusamy	-do-
73/88	6.6.88	Ganesan S/o. Muniyandi	Kampiah S/o Muniyandi
83/88	8.7.88	Sundarrasu	Murugesan (now at Salem)

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6) You had granted the following 2 loans of Rs.3000/- each to the borrowers residing abroad, the

document got time barred and the outstanding becoming difficult of recovery. You failed to take appropriate legal action.

221/87 6.10.87 Shri K Malairajan
292/87 3.12.87 Shri K. Munisamy

7) You had granted the following loans in fictitious names. The borrowers were not available at the addresses given in the application and could not be identified by local persons. You had misappropriated the amounts to yourself.

Loan No.	*Date*	*Name of the borrower*	*Amount*
16/90	17/8/90	Paulraj, S/o Velu	5000/-
69/89	24/8/89	Therakudiyan, S/o Umayanan	5000/-
131/88	5/8/88	Karuppusamy, S/o Kulandaivelu	5000/-
87/88	04/7/88	Munisamy, S/o Arumugam	5000/-
200/87	27/7/87	A. Munisamy, S/o Arumugam	5000/-
168/88	3/11/88	Muniyandi, S/o Malayappan	5000/-
94/88	08/7/88	Vellaichamy, S/o Muthiah	5000/-
96/88	08/7/88	Vellaichamy, s/o Kayambu	5000/-
63/88	06/6/88	Kayambu, S/o Shanmugam	5000/-
55/88	24/5/88	K. Veluchamy, S/o Kamban	5000/-
68/88	06/6/88	Muniyandi, S/o Chinnamuniyan	5000/-
216/87	6/10/87	Muniyandi, S/o Chinnamuniyan	3000/-
117/87	22/6/87	Paulchamy, S/o Muniyandi	3000/-
218/87	6/10/87	Paulchamy, S/o Muniyandi	3000/-
22/89	6/7/89	Karuppusamy, S/o Karuppiah	5000/-
64/89	24/8/89	-do-	5000/-

8) You had granted fishnet loans to the borrowers listed in Annexure C where the borrowers were not the permanent residents of the particular place. The loans were granted furnishing false addresses. Investigation revealed that the addresses furnished were false. The advances were granted for accommodation purpose only.

9) You had granted more than one loan where the earlier loans are overdue and difficult of recovery. The list of borrowers are given in

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Annexure D. Verification revealed that the loans were granted for accommodation purpose only and you derived pecuniary benefit by granting the loan.

10) You had granted the fishnet loans to the borrowers as listed in Annexure E where there is no repayment since disbursement of the loan and the advances have become sticky and doubtful of recovery.

11) You had accepted quotations, for supply of fishnets to the borrowers issued by one Shri P. Kanagaraj, a fisherman, Shri S. Karuppaiah, a fisherman, Shri.P. Murugesan, a fisherman and Shri S. Murugesan, an agricultural labourer who are not dealers of fishnets. It is reported that they encashed the drafts through various bank branches and cash were disbursed to the borrowers after retaining their commission.

12)You failed to conduct pre/post sanction inspection of fishnet/sheep loans. Investigation reveals that you had misutilised the loan proceeds through one Mr.Raghupathy, Mr.Karuppaiah and Mr.Arumugam, middlemen.

It is thus charged that you failed to ensure and protect the interest of the bank and discharge your duties with utmost honesty, integrity, devotion and diligence. You acted otherwise then in your best judgement in the exercise of powers conferred on you and in the performance of your official duties as Manager of the branch."

"Third charge:
Statement of Imputations:

You had committed the following irregularities at Thangachimadam Branch while functioning as Assistant Manager (Agri.)

I) You had recommended for sanction of the following dairy loans of Rs.3,000/- each. It is reported there are no such reasons. It is charged that loan proceeds had been misappropriated by you and by persons known to you.

Sl.No.	*Loan No.*	*Name of the Borrower*
1.	2/89	K. Nagammal
2.	5/89	S. Nagarajan
3.	7/89	M. Karuppiah
4.	10/89	M. Govindan

II) You had recommended for sanction of the following dairy loans of Rs.3,000/- each. Investigation revealed that the animals were not purchased and the purchase vouchers produced are

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fabricated by you. The advances were granted for accommodation purpose and to derive pecuniary advantage.

Sl.No.	*Loan No.*	*Name of the Borrower*
1.	1/89	S. Govindan
2.	4/89	R. Balakrishnan
3.	6/89	M. Jayagopalakrishnan
4.	8/89	S. Namburajan
5.	9/89	N. Karuppayee

III) You had recommended for sanction of second stage loan of Rs.3,200/- each for purchase of second milch animal to the following borrowers. It is reported that the borrowers have not availed second stage loan for purchase of second animal as the place is not suitable for milch animal and their earlier experience in maintaining the animals is not satisfactory. You had utilised the loan documents already executed by them at the time of their availing first stage loan and the second stage loan proceeds were misappropriated by you in connivance with one Shri Muthu, President, Ariyangundu Milk Producers' Co.operative Society Ltd.

Sl.No.	*Loan No.*	*Name of the Borrower*
1.	2/90	P. Chinnavel
2.	3/90	N. Panchammal
3.	4/90	J. Celin Rose
4.	6/90	T. Nambu
5.	13/90	P. Nambu Lakshmi
6.	18/90	I. Celin Mary
7.	19/90	M. Arunanathan
8.	20/90	A. Maria Saroja

IV) You have recommended for sanction of fish net loans to persons mentioned in Annexure_I hereto. Investigation revealed that the addresses furnished by the borrowers were false. Further, the borrowers had already availed a fishnet loan from our Tiruppullani Branch in which you were the Officer-in-Charge of Agricultural Advances. The above facts clearly show that the advances were granted by you for accommodation only to derive pecuniary advantage. Knowing fully well that the advances were not utilised for the purpose for which it was sanctioned you conveniently avoided verification the end-use of the loans. All the advances have become

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irregular and difficult of recovery.

V) You had recommended for sanction of the following fishnet loans of Rs.5,000/- each. While recommending you accepted the quotations issued by one Shri P. Murugesan who is not a dealer in fishnets. You did not conduct any pre-sanction or post-sanction inspection of the advance. All the advances have become irregular and difficult of recovery.

Sl.No.	*Loan No.*	*Name of the Borrower*
1.	56/89	James Justin
2.	57/89	M. Muthiah
3.	58/89	S. Ganesan
4.	60/89	I. Rajendran
5.	61/89	P. Chandran
6.	64/89	S. Rasu
7.	65/89	K. Karuppan
8.	66/89	S. Subramanian
9.	68/89	S. Sethuraman
10.	69/89	Nambu Karuppan
11.	71/89	K. Allimuthu

VI) You had recommended for sanction fishnet loans to the persons mentioned in Annexure-II hereto. It is reported that the borrowers are the residents of Terkuvadi, Pamban and Nalupanai Villages, which are away from the Command Area of the Branch. Further, a few borrowers had already availed fishnet loans from Tiruppullani Branch in which you were the Officer-in-Charge of Agricultural Advances. It is charged that the advances were granted with a view to derive pecuniary advantage. The advances have become irregular and difficult of recovery.

VII) You had recommended for sanction of a fishnet loan No.35/89 for Rs.7,000/- to one Shri Periyaiya, S/o Michael Fernando. It is reported that the borrower has been attacked by polio for the past 8 years. You did not conduct any pre/post-sanction inspection. The advance has become irregular and difficult of recovery.

VIII) You had recommended for sanction of the following fishnet loans of Rs.5,000/- each to the members of a same family.

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Sl.No.	*Loan No.*	*Name of the Borrower*
1.	41/89	P. Powthi, Benefited person
2.	42/89	P. Piragasi Ammal, Mother of Powthi
3.	40.89	Margaret, Wife of Powthi
4.	39/89	P. Salvader, Powthi's brother's wife
5.	38/89	Stella, Powthi's another brother's wife
6.	37/89	S. Ayyasamy, Servant

Fishnets have not at all been purchased. The advances were granted only to accommodate Shri P. Powthi. The advances have become irregular and difficult of recovery.

XI) You had recommended for sanction of Crop loan of Rs.4,950/- each for cultivation of jasmine to the following persons.

Sl.No.	*Loan No.*	*Name of the Borrower*
1.	1/88	N. Ganesan
2.	2/88	P. Sethurajan
3.	3/88	Somammal
4.	4/88	V. Tillainayagam
5.	5/88	K. Nagasamy
6.	6/88	R. Velusamy
7.	7/88	C. Thangavel
8.	8/88	E. Ramiah
9.	9/88	R. Murugesan
10.	10/88	N. Karuppiah

While granting the above advances you had committed the following irregularities.

(i) Chitta and Adangal were not obtained for the following loans:1/88,2?88,4/88,7/88,8/88 and 10/88.

(ii) Advances have become irregular and difficult of recovery.

(iii) Knowing fully well that the loan proceeds were not utilised for the purpose for which it was sanctioned/granted, you conveniently avoided verification of end use of the loans."

(iv)

"Fourth Charge:

Statement of Imputations:

While working as Assistant Manager (Agri) of Kilakarai Branch, you had committed the following irregularities.

I) You had recommended for sanction of sheep loans to persons mentioned in Annexure-A hereto. Investigation revealed that the animals were not purchased and the purchase vouchers produced were fabricated.

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Advances have become sticky and difficult of recovery.

II) You had recommended for sanction of the following sheep loans:

Loan No.	Name of the Borrower	Loan Amount (Rs.)
39/88	Shri A. Alagarsamy	5,500
18/89	Smt. A. Gomathy	6,500

The borrowers are husband and wife and are employed as Teacher and Noon-Meal Organiser respectively. They are not eligible to avail loan under IRDP. Thus you had recommended the advances for accommodation purpose only.

III) You had recommended for sanction of the following six Sheep Loans.

Loan No.	*Name of the Borrower*	*Loan Amount Rs.*	*Amount paid to Borrower (Rs.)*
12/89	R. Ramu	6,500	5,200
16/89	Govindan	6,500	5,000
35/89	P. Arasi	6,500	6,000
40/89	Valliammai	6,500	5,500
43/89	Smt. Pousha Beevi	6,500	5,500
45/89	Vallimuthu	6,500	6,000

It is reported that the loan proceeds were paid in cash that too lesser amount was paid than the actual loan amount. It is charged that a sum of Rs.5,800/- was misappropriated by you and persons known to you.

IV) You had recommended for sanction of fishnet loans to the persons mentioned in Annexure-B hereto. It is reported that there are no such persons. It is charged that the loan proceeds had been misappropriated by you and persons known to you.

V) You had recommended for sanction of fishnet loans to the persons even though the earlier fishnet loans granted to them were irregular and sticky. Details of such accounts are furnished in Annexure -C hereto. The entire advances have become sticky and difficult of recovery.

VI) You had recommended for sanction of 9 fishnet loans to the persons mentioned in Annexure-D hereto. It is reported that the loan proceeds were paid in cash, that too lesser amount was paid than the actual loan amount. It is charged that a sum of Rs.6,550/- was misappropriated by you and persons known to you.

VII) You had recommended for sanction of sheep loans to persons mentioned in Annexure-E hereto. It is reported that the animals were not purchased and the loan proceeds were not utilised for the

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purpose for which the advances were granted. The entire advances have become irregular and difficult of recovery.

VIII) You had recommended for sanction of fishnet loans to the persons against the quotations given by Messrs. Kanakaraj, S. Karuppiah, P. Murugesan, A. Gopalakrishnan and C. Sethurajan. Verification revealed that they are not dealers in fishnets and the quotations issued by them are not genuine. The entire loan proceeds were allowed to be misutilised.

10. The first charge relates to the case of granting fisheries loan and loan for purchase of 56 sheep loans listed in Annexures A,B,C and D wherein the charge was that the petitioner has recommended persons who are not available or while granting loans, only part of the amount has been given to the loanees or in cases where he has granted loan for purchase of fishing nets and the amount has been disbursed in favour of the sellers who were found to be non-existing persons and in respect of the sheep loans, the purchase vouchers were fabricated. In respect of these charges, it is the case of the petitioner that he has submitted his explanation on 23.12.1991. While denying the said charges, he has also given the particulars that the persons to whom the loans were granted were available. He has also stated that the borrowers have not given any complaint. It is also his defence in the explanation that the borrowers used to purchase fishing nets among themselves who are experienced in manufacturing fishing nets at cheap rate with good quality. Therefore, he accepted the purchase from such persons even though they were not approved by the Government. It is also his case in the reply that in respect of 56 sheep loans, the proposals have been sent by the Block Development Officer under IRDP Scheme and it was based on the same he has acted. He has also given details about various purchases and payments made, etc. It is seen that in respect of the said charges, the Presenting Officer has given his sum-up and the summing up statement of the defence was submitted and ultimately the Enquiry Officer's findings dated 07.04.1995 have been served on the petitioner. After receiving the Enquiry Officer's report the petitioner has not given any reply to that and thereafter, the order of punishment came to be passed.

11. In respect of the second charge sheet dated 20.05.1992, the petitioner has in fact submitted his explanation on 01.08.1992. The second charge relates to functioning of the petitioner in Thiruppullani Branch, which relates to the granting of sheep loans and contains instances wherein the petitioner has drawn the loan proceeds, but not purchased the animals and thereby misappropriated the amounts. Like that, in respect of purchase of fishing net also same persons, viz., one M. Shanmugam and U. Mani were granted fishing loans both at Uchipuli and Thiruppullani Branches. It is also the further charge that second loan has been granted to six borrowers as per Annexure B. That apart, the other charge was that in respect of nearly eight persons, fishing net loans have been advanced in benami names. In

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fact, in respect of two persons who are residing abroad, the loans have been granted and in respect of many other persons also the loanees were not identifiable. The further charge is also in respect of accepting quotations for supply of fishing nets etc. from the persons who are not at all dealers in fishing nets. The petitioner has submitted his explanation to the said charges on 01.08.1992, repudiating the charges wherein it is stated that in respect of sheep loans they were all granted based on IRDP Sponsorship. As far as the non-availability of the persons, it is the defence of the petitioner that they stayed in huts during seasons and therefore, it is not correct to state that the amounts were advanced in benami names. It is also stated that he recommended only based on the presence of those individuals and with the bona fide belief. In fact in respect of these charges, the petitioner has submitted his defence arguments. Thereafter, the Enquiry Officer has given a finding on 27.12.1996. The Enquiry Officer's finding in respect of this charge is that all charges are proved against the petitioner. In respect of the second charge also the petitioner has not chosen to give reply to the Enquiry Officer's finding.

12. The third charge relates to the working of the petitioner in Thankachimadam Branch, which also relate to recommendation of dairy loans, and that the purchase vouchers were fabricat**ed by the petitioner etc. In the case of sanctioning of fishing** net loans, the names of borrowers are found to be false. It was also found that in respect of some of the fishing net loanees, the persons were living far away places and two persons have already availed loan from Thiruppullani Branch. In respect of one Periya Ayya, to whom finishing net loan of Rs.7,000/- was sanctioned was found to be bed-ridden for 2 years and therefore the advance becomes fictitious and illegal. In respect of nearly six cases of fishing net loans, they have not purchased. Likewise, in respect of crop loans also for cultivation of jasmine, there was irregularity in sanctioning the loan, since chitta and adangals were obtained from the loanee and knowing fully well the purpose for which it was sanctioned, the petitioner did not make a proper verification. The petitioner has not submitted his explanation and in the preliminary enquiry the petitioner has not appeared in spite of the notice and the matter was adjourned on various days, viz., 12.09.1996 and 20.09.1996 since the petitioner though received the enquiry notice, failed to appear, the enquiry was proceeded ex parte and ultimately the Enquiry Officer has given his finding after enquiry on 27.12.1996.

13. Likewise, in respect of the 4th charge dated 11.10.1993, it also relates to sanction of sheep loans wherein it was found that animals were not purchased and in some cases, both husband and wife were employed as teacher and Noon-meal organiser who were not eligible for the loan under IRDP Scheme and they were recommended by the petitioner for loan and they have also obtained the same. In respect of nearly six cases where sheep loans were granted, the petitioner has given only lesser amounts misappropriating the balance amount. In respect of the loans granted for the purchase of fishing nets, such persons were not available. Likewise, in respect of sheep loans, persons mentioned

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in Annexure-E of the said Charge reported that the animals were not purchased. The said charges were given in various Annexures in the Charge sheet. In respect of these charges, the petitioner has submitted his reply on 13.12.1993. However, the petitioner by letter dated 21.11.1994 addressed to the Enquiry Officer has requested for reinstatement instead of participating in the enquiry. The Enquiry Officer has given his findings and the same have been communicated to the petitioner on 5.3.1997 by the respondent Bank as it is seen in the letter of the petitioner addressed to the Deputy General manager, the disciplinary authority, dated 19.3.1997. The petitioner appears to have given some representations in respect of the charge sheet dated 20.5.1992 viz., the second charge sheet. Ultimately, the disciplinary authority having satisfied that in the enquiry, charges framed against the petitioner stood proved, passed the order of dismissal on 31.3.1997. The said order of dismissal was passed in accordance with the regulations. The Indian Overseas Bank Officers/Employees (Conduct) Regulations, 1976, particularly, Regulation 3(1) contemplates the general conduct as follows:

> "3. (1) Every Officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank Officer.
>
> (2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.
>
> (3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him not otherwise than in his best judgement except when he is acting under the direction of his official superior.
>
> (4) Every Officer employee shall take all possible steps to ensure the integrity and devotion and duty of all persons for the time being under his control and authority."

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It is also stated under Regulation 24 that any breach of the provisions of the Regulations will be deemed to be a misconduct punishable under the Indian Overseas Bank (Discipline and Appeal) Regulations, 1976.

14. As against the order of disciplinary authority, the petitioner has filed an appeal on 12.6.1996 before the General Manager, Indian Overseas Bank, viz., the third respondent. It was a comprehensive appeal in respect of all charges. It is seen that the third respondent being the appellate authority, has in fact given personal hearing to the petitioner on 9.9.1997 in which the petitioner has given his submissions. In addition to that, on the same day viz., 9.9.1997, the petitioner has also given his written statement to the appellate authority. It was, after

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considering the grounds of appeal as well as the statement and representation, the third respondent in fact discussed in detail about each and everyone of the charges and ultimately came to the conclusion that there is no reason to interfere with the order of the original authority in passing the dismissal order. On the review petition filed by the petitioner to the second respondent on 15.12.1997, the second respondent has passed orders on 10.7.1998 rejecting the same.

15. Even though the learned counsel for the petitioner has made submissions in respect of each and everyone of the charges with minute details, I do not think that this Court exercising jurisdiction under Article 226 of the Constitution of India can go into the minute details of each and every one of the charges and findings given by the Enquiry Officer as well as the disciplinary authority as this Court under Article 226 of the Constitution of India cannot re-appreciate the evidence in the enquiry proceedings.

16. While deciding about the jurisdiction of High Court under Article 226 of the Constitution of India in respect of the disciplinary proceedings, the Supreme Court has categorically held in Sub Divisional Officer, Konch vs. Maharaj Singh (2003(3) LLJ 1080) that the jurisdiction of the High Court under Article 226 of the Constitution of India is only supervisory in nature and not exercising appellate jurisdiction and therefore, the High Court cannot re-appreciate the evidence. The facts of the said case which are similar to the present case, wherein on various set of charges, enquiry was conducted and on the basis of the materials produced and on the basis of enquiry report, order of termination was passed by the disciplinary authority and the same was challenged by way of appeal and the appellate authority has also dismissed the appeal and when a writ petition was filed, the High Court considered the entire materials produced before the Enquiry Authority and found that the charges cannot be said to be proved beyond reasonable doubts and allowed the writ petition. It was in those circumstances, the Supreme Court has held as follows:

> "5. In view of the submissions made at the Bar, we have scrutinised the impugned order of the High Court. A bare perusal of the same makes it crystal clear that the High Court in exercise of its jurisdiction under Article 226 has re-appreciated the entire evidence, gone into the question of burden of proof and onus of proof and ultimately did not agree with the conclusion arrived at by the enquiring officer, which conclusion was upheld by the disciplinary authority as well as the U.P. Public Service Tribunal. It has been stated by this Court on a number of occasions that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in re-appreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority. In

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> the aforesaid premises, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction under Article 226 in interfering with the findings arrived at by the enquiring authority by re-appreciation of the evidence adduced before the said enquiring authority. We, therefore, set aside the impugned order of the High Court and the writ petition filed stands dismissed. This appeal is allowed."

That was also the view taken by the Apex Court in the judgement rendered in State of U.P. v. Nand Kishore Shukla & Anr. (1996(2) LLJ 672).

17. Applying the ratio laid down by the Apex Court and on the basis of the facts which I have narrated above, there is absolutely no difficulty in coming to the conclusion that the disciplinary authority and the appellate authority have considered each and every one of the charges individually along with the explanation submitted by the petitioner as well as the Enquiry Officer's report and based on materials, have come to the concurrent conclusion of dismissing the petitioner from service. In these circumstances, it is not tenable for the learned counsel for the petitioner to contend that this Court should re-appreciate evidence. However, the seriousness of the charges and the proof which has been made in this case can be elicited by pointing out few instances. It shows on record that in respect of one Mani on the basis of recommendation of the petitioner, he was granted loan in all the three branches, viz., Thankachimadam branch, Uchipuli Branch and Tiruppullani Branch which were under the control of the petitioner. Likewise, there are cases which are proved with records to show that suppliers of various materials to the loanees were also borrowers based on the recommendations of the petitioner. That apart, the entire enumeration which I have stated above, shows that sufficient opportunity has been given to the petitioner and in fact, in respect of two charges, he has submitted explanation and participated in the enquiry and in respect of other two charges in spite of notice given to him, he has failed to participate. It is, at this stage, relevant to point out that utmost honesty and integrity are required to a person like petitioner who is entrusted with the duty of looking after the poor people to whom loans are being sanctioned as per the avowed schemes of the Government.

18. It was in Chairman and Managing Director, United Commercial Bank of India v. P.C. Kakkar (2003(4) SCC 364), the Apex Court, while deciding about the scope of judicial review in respect of punishment imposed by the disciplinary authority, has laid down the law that only in cases where the punishment is shockingly disproportionate, the Court can direct the disciplinary authority to reconsider the penalty imposed or in exceptional and rare cases, the Court itself can impose reduced punishment by giving cogent reasons, but however, that cannot always be a ground for judicial interference. In the said case, while dealing with utmost integrity and honesty and devotion which

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are required to a bank officer, the Supreme Court has held as follows:

> "14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnai (1996 (9) SCC 69 : 1996 SCC (L&S) 1194 it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline on an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court. "

19. The further contention raised by the learned counsel for the petitioner is that the Enquiry Officer as well as the disciplinary authority have imposed punishment in spite of the fact that there is no sufficient evidence and that strict proof has not been made out against the petitioner. He would also submit that in respect of some of the cases, the onus of proof has been shifted to the petitioner and therefore, according to him, as per the principles of evidence, it is for the person who makes the charges to prove the same. On the other hand, the law is well-settled that the nature of evidence and proof in the disciplinary proceedings and domestic enquiry cannot be the same as it is required under the principles enunciated in the Indian Evidence Act, in a Court of law. The Supreme Court in State of Haryana and another vs. Rattan Singh (1982 (1) LLJ 46) has held as follows:

> "4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this

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> proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion and extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is basis and if perversity or arbitrariness, bias or surrender of independence of judgement vitiate the conclusions reached, such finding, even though of a domestic, Tribunal cannot be held good. However, the Courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before the valid finding could be recorded. The "residium" rule to which counsel for the respondent referred, based upon certain passages from the American Jurisprudence does not go to that extent nor does the passage from the Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as means of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

The said view was confirmed by the Supreme Court in the subsequent judgement reported in S.B.I. v. TARUN KUMAR BANERJEE (2000-II LLJ 1373). The Supreme Court in later judgement rendered in HIGH COURT OF JUDICATURE, BOMBAY v. UDAYSINGH (1997) 5 SCC 129) has also held that the technical rules of evidence and proof are not applicable to departmental enquiry compared to criminal trial. Therefore the contention raised by the learned counsel for the petitioner that in the absence of sufficient evidence, the petitioner has been penalised with maximum punishment has no basis.

20. As I have narrated earlier, the charges levelled against the petitioner are serious and cannot be termed, by any stretch of imagination, either as technical or very small in nature. The instances of proof which have been made out as seen in the Enquiry Officer's report as well as the order of the disciplinary authority, show clearly that there are sufficient grounds for the disciplinary authority to come to such a conclusion and it can never be termed as bald, therefore in my considered view there is absolutely no reason for this Court to

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interfere with the findings of the disciplinary authority including the quantum of punishment since it can never be said to be shockingly disproportionate to the charges levelled against the petitioner.

21. The further contention raised by the learned counsel for the petitioner that the appellate authority has not considered the merit of the case also deserves to be rejected. It is not only due to the reason that the disciplinary authority has in fact considered the materials in detail and given findings in respect of each and everyone of the charges, but also the petitioner was given personal hearing. A Division Bench of this Court in Indian Overseas Bank rep. By its General Manager, Madras v. R. Sathyamoorthi (1994) 1 LLN 427, in almost similar circumstances, has held that it is not necessary for the appellate authority to go into the details and give reasons. Even though in that case also, the appellate authority has in fact given details the Court held as follows:

> "2. .... That being so, it is not possible to agree with the learned Single Judge that the order of the Board is not a speaking order. In addition to this, this is a case in which the disciplinary authority recorded findings on each one of the charges on the basis of the findings recorded by the enquiry authority. Sufficient reasons are contained in the order the enquiry authority. Therefore, it was not necessary for the appellate authority to go into the matter in detail and detail reasons, if such reasons are available in the original order. However, as already pointed out, the Board has gone into the matter in detail. In a case where the reasons are contained in the findings recorded by the enquiry officer and even if the appellate authority does not go into them in details, the order may not be vitiated as held by the Supreme Court in S.N. Mukjherjee vs. Union of India (1991 (1) LLN 557). "

The judgement of the Apex Court rendered in Narinder Mohan Arya vs. United India Insurance Co. (2000 (6) SCC L & S 840) on which reliance was placed by the learned counsel for the petitioner is in fact against the case of the petitioner. In that case, the Supreme Court has held that when the appellate authority agreed with the disciplinary authority and the delinquent employee raised serious contention in his appeal, the appellate authority should assign reasons to find out whether there was application of mind by the disciplinary authority, while construing Rule 37 of the General Insurance (Conduct, Discipline and Appeal)Rules, 1975. In the present case, the appellate authority in fact not only has given opportunity to the petitioner to participate, but also given a detailed order. Likewise, the judgement of the Supreme Court in Director (Mkt) Indian Oil Corporation Limited and another vs. Santosh Kumar (2006 (3) CTC 669) on which reliance was placed by the learned counsel for the petitioner is also not applicable to the facts and circumstances of the case. That was a case wherein

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the Apex Court has pointed out that the appellate authority has passed a cryptic non-speaking order and in those circumstances, liberty was given to the appellant to reinitiate the enquiry by the punishing authority.

In view of the above said facts and circumstances, there is absolutely no reason to interfere with the impugned orders passed by the respondent bank against the petitioner. With the result, the writ petition fails and the same is dismissed. No costs.
Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman
Indian Overseas Bank
and Managing Director
Central Office
763 Mount Road
Chennai 600 002.

2. The Executive Director
Indian Overseas Bank
Central Office
763 Mount Road
Chennai 600 002.

3. The General Manager
Appellate Authority
Indian Overseas Bank
Central Office
763 Mount Road
Chennai 600 002.

WEB COPY

+ one cc to Mr. N.G.R. Prasad, Advocate sr no. 48249
+ one cc to Mr. R. Subramanian, Advocate sr no. 48351

KK(CO)
NM(14.08.07)

W.P.No.14205 of 1998

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